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Supreme Court of the United States

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PUERTO RICO, *Petitioner*,

v.

RUSSELL & CO., *Sucres., S en. C.*, HORACE HAVEMEYER, FRANK A. DILLINGHAM, *et al.*, *Respondents.*

MEMORANDUM of oral argument for Petitioner on jurisdictional question, as to the case of *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U. S. 449.

The opinion of the court in the *Great Southern Fireproof Hotel Co.* case might be interpreted in any one of three ways:

FIRST: *As meaning to narrow the* LETSON *case, and for that purpose to hold that nothing is to be considered as a corporation for the purposes of federal jurisdiction except a technical "corporation" expressly so-called by the statute under which it is organized.*

But that would be to regard the name rather than the substance and would appear to be out of harmony with the liberal tendencies of this court as evinced not only by its definition of the essential elements of a corporation in the *Letson* case and also in the *Liverpool Insurance Co.* case (*Liverpool Insurance Co.* v. *Massachusetts*, 10 Wall. (77 U. S.) 566, 574), and the statement in the *Liverpool Insurance Co.* case (at p. 575) that,

> "To attempt, therefore, to define a corporation, or limit its powers by the rules which prevailed when they were rarely created for any other than municipal purposes, and generally by royal charter, is impossible in this country and at this time";

and evinced also by recent decisions, such as *Hemphill* v. *Orloff*, 277 U. S. 537, 550, where this court said,

> "Whether a given association is called a corporation, partnership, or trust, is not the essential factor in determining the powers of a state concerning it. The real nature of the organization must be considered. If clothed with the ordinary functions and attributes of a corporation, it is subject to similar treatment",

and the *Coronado* case (*United Mine Workers* vs. *Coronado*, 259 U. S. 344, 391-392) holding labor union organizations suable in federal courts, and cases following the *Coronado* case, such as, for instance, *Brown* v. *United States*, 276 U. S. 134, 142, holding that a subpoena *duces tecum* even in a criminal proceeding may run against an unincorporated association. Evidently, therefore, it was not the intention of this Court in the *Great Southern Fireproof Hotel Co.* case to hold that the mere name or label "corporation", or the mere absence of that label, is the determinative thing.

SECOND: *It might be interpreted as meaning that partnership associations of Pennsylvania inherently do not possess the essential elements of a corporation*, and as disagreeing with the opinions of the Circuit Courts of Appeals of the Second and Sixth Circuits and with the Circuit Judges for the New York and Ohio Circuits, who had determined that they did. (*See the decisions in the Circuit Courts of Appeals and of the Circuit Courts collected in petitioner's reply brief herein*, on page 19). But if that had been the intention of this Court in the *Great Southern Fireproof Hotel Co.* case then one would

expect to find in that opinion an examination of the essential elements of the Pennsylvania partnership associations and a comparison of those elements with the elements which this Court in the *Liverpool Insurance Co.* case, *supra* (10 Wall (77 U. S.) at page 574) and in the *Letson* case had laid down as the essential elements of a corporation; and also an examination of the opinions of the subordinate federal courts, particularly of that of the Circuit Court of Appeals for the Sixth Circuit in *Andrews Bros. Co.* v. *Youngstown Coke Co., Ltd., supra,* 86 Fed. 585, 586-596, which is mentioned in the opinion of this Court (177 U. S., at p. 457) and a statement of the reasons of this Court for holding that the Pennsylvania "partnership association" lacked in its organization some of the essential elements of a corporation. And particularly an examination of the grounds of the statements of the Pennsylvania Supreme Court, in the Pennsylvania cases cited in the opinion for calling the organization a "quasi-corporation", and an analysis of those Pennsylvania cases for that purpose. But there is nothing of that kind in the opinion, nor anything intimating any intention to overrule or limit the statements of this Court in the *Liverpool Insurance Co.* case and in the *Letson* case as to what are the essential elements of a corporation. And the *Liverpool Insurance Co.* case was recently cited, apparently with full approval, in *Hemphill* v. *Orloff, supra,* 277 U. S. 537, 550.

THIRD: *The opinion in the Great Southern Fireproof Hotel Co. case may be read as intending to hold simply that this Court will follow the determination of the local State court as to whether or not the organization is a corporation, and will not look behind the determination of the State court.*

This interpretation seems to be consistent with the form of the opinion in the *Great Southern Fireproof Hotel Co.* case, and with the fact that this Court in that opinion emphasized

the conclusions of the Pennsylvania court as to the nomenclature to be used in describing partnership associations of that State, instead of examining for itself the essential characteristics of those organizations; and that, in disagreeing with the opinion of the Circuit Court of Appeals for the Sixth Circuit in the *Youngstown Coke Co.* case, this court contented itself with saying,

> "For the reasons stated, we are unable to concur in the view taken by that court",

"the reasons stated" not going to the fundamental structure of the organizations, but rather to what the Pennsylvania Supreme Court had named them. That this is the correct interpretation to be put on the *Great Southern Fireproof Hotel Co.* opinion seems to have been assumed by the Circuit Court of Appeals for the Sixth Circuit when later on it came to deal with a "partnership association" of Michigan, and, holding that such an organization could not be distinguished in its elements from the Pennsylvania partnership association, and recognizing that its own decision as to the Pennsylvania organizations had been overruled by this Court in the *Great Southern Fireproof Hotel Co.* case, it said:

> "Thus there has never been any decision of the State of Michigan which determines that these associations are corporations" (*Fred Macey Co.* v. *Macey,* 135 Fed. 725, 728; LURTON, J.),

and on that ground held that it could not "reasonably distinguish this association from those under view" in the *Great Southern Fireproof Hotel Co.* case. That seems to be a recognition that if the Michigan Supreme Court had determined that such an association was a *corporation* then the Circuit Court of Appeals would have considered itself free, under the

opinion of this Court in the *Great Southern Fireproof Hotel Co.* case, to follow such determination of the Michigan court. And along the same line is also the later opinion of this Court, likewise written by Mr. Justice HARLAN who wrote the opinion in the *Great Southern Fireproof Hotel Co.* case, in the case of *Thomas* v. *Board of Trustees of Ohio State University,* 195 U. S. 207, in which this Court held that it would not consider the Board of Trustees as a corporation, although it apparently possessed all of the essential elements of a corporation, simply because the Ohio courts had held that it was not a corporation, that

> "upon an issue distinctly made, the Supreme Court of Ohio has adjudged that the defendant Board is not, and was not intended to be made, a corporation of the State" (at p. 216),

and that

> "While the state court may not conclusively determine for this court what is and what is not a corporation within the meaning of the jurisdictional rule that a corporation, for purposes of suing and being sued in the courts of the United States, is, under the Constitution and laws of the United States, to be deemed a citizen of the State by whose laws it is created, nevertheless, this court should accept the judgment of the highest court of a State upon the question whether a particular body created by its laws is or is not a corporation, by virtue of those laws, unless a contrary view is demanded by most cogent reasons involving or affecting the constitutional and statutory jurisdiction of the Federal courts." (at pp. 216-217).

IN OTHER WORDS, THE DETERMINATIVE THING IS WHAT THE LOCAL STATE COURT OF LAST RESORT HAS DETERMINED THE ORGANIZATION TO BE. If that court has determined that it is a corporation, then it is a corporation for Federal jurisdic-

tional purposes; and *vice versa*, if that court has not determined it to be a corporation, then it is not a corporation for federal jurisdictional purposes, until or unless the local State court has so determined.

Accepting that rule, the *sociedad* here in question is a corporation for the purposes of federal jurisdiction. The local supreme court of last resort,—the Supreme Court of Puerto Rico,—has expressly so determined in the *Zayas* case (*People of Puerto Rico* v. *Rivera Zayas*, 29 P.R.Rep. 423, 428-431), cited and quoted in our supporting brief and in our reply brief herein (Supporting Brief, pp. 21-24; Reply Brief, pp. 24-25).

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